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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/426,827	10/25/1999	KIMBERLY ANN MUDAR	D-43266-01	2390

28236 7590 01/29/2003

CRYOVAC, INC.  
SEALED AIR CORP  
P.O. BOX 464  
DUNCAN, SC 29334

EXAMINER
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HON, SOW FUN

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 01/29/2003

18

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/426,827

Applicant(s)

MUDAR ET AL.

Examiner

Sow-Fun Hon

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 November 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                          | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>17</u> . | 6) <input type="checkbox"/> Other: _____                                    |

Art Unit: 1772

## **DETAILED ACTION**

### ***Response to Amendment***

#### ***Withdrawn Rejections***

1. The 35 U.S.C. 112,2<sup>nd</sup> paragraph rejection in Paper # 13, paragraph 6 (mailed 06/05/02) of claim 7 has been withdrawn due to Applicant's clarification in Paper # 16 (filed 11/06/02).
2. The 35 U.S.C. 112,2<sup>nd</sup> paragraph rejection in Paper # 13, paragraph 7 (mailed 06/05/02) of claim 8 has been withdrawn due to Applicant's amendment in Paper # 16 (filed 11/06/02).
3. The 35 U.S.C. 112,2<sup>nd</sup> paragraph rejection in Paper # 13, paragraph 8 (mailed 06/05/02) of claim 13 due to Applicant's affirmation of the examiner's interpretation of the layers in terms of their positioning in the multilayer film in Paper # 16 (filed 11/06/02).
4. The 35 U.S.C. 102(b) rejection in Paper # 13 (mailed 06/05/02) of claims 1, 3-11, 14-25 as being anticipated by Ferguson ('403) has been withdrawn due to Applicant's clarification in Paper # 16 (filed 11/06/02) of the two different ethylene/alpha-olefin copolymers in terms of their densities.
5. The 35 U.S.C. 103(a) rejection in Paper # 13 (mailed 06/05/02) of claim 9 over Ferguson ('403) in view of Ferguson ('856) has been withdrawn due to Applicant's clarification in Paper # 16 (filed 11/06/02).

#### ***Rejections Repeated***

6. The 35 U.S.C. 112,2<sup>nd</sup> paragraph rejections of claims 1, 3-25 have been repeated for the same reasons previously of record in Paper # 13, paragraphs 4-5 (mailed 06/05/02). Applicant is respectfully requested to fully consider the response below.

7. The 35 U.S.C. 103(a) rejection of claims 1, 3-8, 10-11, 13-25 over Ferguson ('403) in view of Ferguson ('856) has been repeated for the same reasons previously of record in Paper # 13, paragraph 11 (mailed 06/05/02).
8. The 35 U.S.C. 103(a) rejection of claim 12 over Ferguson ('403) in view of Ferguson ('856) and further in view of Wilhoit has been repeated for the same reasons previously of record in Paper # 13, paragraph 12 (mailed 06/05/02).

***Response to Arguments***

9. Applicant's arguments in Paper # 16 (filed 11/06/02), with respect to the 112, 2<sup>nd</sup> paragraph rejections in Paper # 13, paragraphs 4-5 (mailed 06/05/02) of claims 1, 3-25 have been fully considered but they are not persuasive.

Applicant has failed to point out any differences in structure between homogenous and heterogenous ethylene/alpha-olefin copolymers. Applicant has also failed to address the difference in the amounts of comonomer present. The composition distribution breadth index should be used to clearly define independent claim 1 and dependent claim 9.

10. Applicant's arguments in Paper # 16 (filed 11/06/02), with respect to the rejection of claims 1, 3-8, 10-11, 13-25 over Ferguson ('403) in view of Ferguson ('856), have been fully considered but they are not persuasive.

- a. Applicant argues that Ferguson '856 is particularly directed to a multilayer film having at least one layer consisting essentially of VLDPE in addition to another film layer of the LLDPE-VLDPE blend, and that to use Ferguson '856 to modify the LLDPE

layer of Ferguson '403 into a layer comprising a blend of LLDPE and VLDPE would not result in at least one layer consisting essentially of VLDPE in Ferguson '856.

Applicant is respectfully reminded that Ferguson '403 is the primary reference being used to teach the patch film. Ferguson '856 is the secondary reference which teaches unexpected results wherein the VLDPE not only provides improved O<sub>2</sub> barrier properties, but also is shrinkable well below its melting point and thus below the boiling point of water, which is very useful in packaging applications ('856, column 6, lines 45-60, column 5, lines 1-5). The very fact that Ferguson '856 teaches a blend of VLDPE and LLDPE in one layer ('856, column 5, lines 20-30) means that Ferguson '856 recognizes the advantage of the blend.

b. Applicant argues that to substitute VLDPE for some of the LLDPE in the patch film of Ferguson '403 would have been thought to be likely to diminish the surprising strength and toughness of the LLDPE patch of Ferguson '403.

Applicant is respectfully reminded that the very fact that Ferguson '856 teaches a blend of VLDPE and LLDPE in one layer ('856, column 5, lines 20-30) means that Ferguson '856 recognizes the advantage of the blend. VLDPE can be oriented out of a hot water bath some 40 °C below its melt point ('856, column 8, lines 65-68) whereas LLDPE has difficulty. Combining Ferguson '856 with Ferguson '403 thus produces an improvement over Ferguson '403.

c. Applicant argues that the overall thrust of Ferguson '856 is to maximize the amount of VLDPE in a heat-shrinkable bag, and that that of Ferguson '403 is to maximize the amount of LLDPE in a heat-shrinkable patch. Again, Applicant is

Art Unit: 1772

reminded that the very fact that Ferguson '856 teaches a blend of VLDPE and LLDPE in one layer ('856, column 5, lines 20-30) means that Ferguson '856 recognizes the advantage of the blend.

11. Applicant's arguments in Paper # 16 (filed 11/06/02), with respect to the rejection of claim 12 over Ferguson ('403) in view of Ferguson ('856), and further in view of Wilhoit, have been fully considered but they are not persuasive.

Applicant failed to argue why Wilhoit cannot be used to teach a monolayer patch. Wilhoit teaches that blending provides the most desired properties of the resin components in a single film ('128, column 2, lines 60-68), and that the film may be monolayer ('128, column 3, lines 25-35).

#### ***Allowable Subject Matter***

12. Claim 9 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

Art Unit: 1772

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication should be directed to Sow-Fun Hon whose telephone number is (703)308-3265. The examiner can normally be reached Monday to Friday from 9:00 AM to 6:00 PM.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached on (703)308-4251. The fax phone number for the organization where this application or proceeding is assigned is (703)872-9311.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0661.

SH

Sow-Fun Hon

01/27/03

  
HAROLD PYON  
SUPERVISORY PATENT EXAMINER  
1772

1/27/03